



DEPARTMENT OF COMMERCE

International Trade Administration

[C-560-834]

Utility Scale Wind Towers from Indonesia: Notice of Court Decision Not in Harmony with the Final Determination of Countervailing Duty Investigation; Notice of Amended Final Determination; Notice of Revocation of Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On December 28, 2021, the U.S. Court of International Trade (CIT) issued its final judgment in *PT. Kenertec Power System v. United States*, Consol. Ct. No. 20-03687, sustaining the Department of Commerce (Commerce)'s remand redetermination pertaining to the countervailing duty (CVD) investigation of utility scale wind towers (wind towers) from Indonesia covering the period of investigation, January 1, 2018, through December 31, 2018. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final determination in that investigation and that Commerce is amending the final determination with respect to the countervailable subsidy rate determined for PT. Kenertec Power System (Kenertec). Because the amended countervailable subsidy rate determined for Kenertec, the only individually-examined respondent in the investigation, is now *de minimis*, Commerce is hereby revoking the CVD order.

DATES: Applicable January 7, 2022.

FOR FURTHER INFORMATION CONTACT: Alex Wood or Melissa Kinter, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1959 or (202) 482-1413, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 6, 2020, Commerce published its final determination in the CVD investigation of wind towers from Indonesia. Commerce reached an affirmative determination that Kenertec received countervailable subsidies at a net countervailable subsidy rate of 5.90 percent.¹

Commerce subsequently published the CVD order on wind towers from Indonesia.²

Kenertec and the Wind Tower Trade Coalition, the petitioner in the investigation, appealed Commerce's *Final Determination*. On July 20, 2021, the CIT remanded the *Final Determination* to Commerce, directing Commerce to address whether it improperly included an export subsidy in its upstream subsidy calculation.³ In the final remand redetermination, issued in August 2021, Commerce: (1) determined that the Rediscount Loan Program is an export subsidy; (2) concluded that the export subsidy was improperly included in the upstream subsidy calculation for Kenertec in the *Final Determination*; and (3) excluded the export subsidy from the calculation.⁴ The changes made in the *Final Redetermination* resulted in a *de minimis* net countervailable subsidy rate of 0.85 percent for Kenertec. The CIT sustained Commerce's *Final Redetermination*.⁵

Timken Notice

In its decision in *Timken*,⁶ as clarified by *Diamond Sawblades*,⁷ the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as

¹ See *Utility Scale Wind Towers from Indonesia: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 85 FR 40241 (July 6, 2020) (*Final Determination*).

² See *Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Orders*, 85 FR 52543 (August 26, 2020).

³ See *PT. Kenertec Power System v. United States*, Consol. Ct. No. 20-03687, CM/ECF Doc. No. 38 (CIT July 20, 2021).

⁴ See *Final Results of Redetermination Pursuant to Court Remand, PT. Kenertec Power System & Wind Tower Trade Coalition v. United States*, Consol. Ct. No. 20-03687, dated August 18, 2021 (*Final Redetermination*), available at <https://access.trade.gov/resources/remands/20-03687.pdf>.

⁵ See *PT. Kenertec Power System v. United States*, Consol. Ct. No. 20-03687, Slip Op. 21-175 (CIT December 28, 2021).

⁶ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

⁷ See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

amended (the Act), Commerce must publish a notice of court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s December 28, 2021, judgment constitutes a final decision of the CIT that is not in harmony with Commerce’s *Final Determination*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Determination

Because there is now a final court judgment, Commerce is amending its *Final Determination* with respect to Kenertec as follows:

Producer/Exporter	Percent <i>Ad Valorem</i>
PT Kenertec Power System	0.85 (<i>de minimis</i>)

Revocation of Countervailing Duty Order

Pursuant to section 705(a)(3) of the Act, Commerce “shall disregard any countervailable subsidy that is *de minimis* as defined in section 703(b)(4)” of the Act. Furthermore, and pursuant to section 705(c)(2) of the Act, “the investigation shall be terminated upon publication of that negative determination” and Commerce shall “terminate the suspension of liquidation” and “release any bond or other security and refund any cash deposit.” As a result of this amended final determination, Commerce is hereby revoking the CVD order on wind towers from Indonesia because the revised CVD rate determined for Kenertec, the only mandatory respondent, is now *de minimis*.⁸ Because the revised net countervailable subsidy rate determined for the sole mandatory respondent, Kenertec, is *de minimis*, Commerce did not determine an all-others rate in the *Final Redetermination*. Accordingly, Commerce intends to issue instructions to U.S. Customs and Border Protection (CBP) to release any bonds or other security and refund cash deposits pertaining to any suspended entries pursuant to the order. As a result of this revocation, Commerce will not initiate administrative reviews of this order.

⁸ See *Final Redetermination*.

Cash Deposit Requirements and Liquidation of Suspended Entries

As a result of this amended final determination, Commerce is revoking the CVD order on wind towers from Indonesia. Accordingly, Commerce will instruct CBP to cease any collection of cash deposits of estimated CVD duties on entries of wind towers from Indonesia and to release any bonds or other security and refund cash deposits pertaining to any suspended entries of wind towers from Indonesia. Although section 705(c)(2)(A) of the Act instructs Commerce to terminate suspension of liquidation, we note that, pursuant to *Timken*, the suspension of liquidation must continue during the pendency of the appeals process. Thus, we will instruct CBP at this time to: (1) release any bond or other security and refund any cash deposit made pursuant to the order as discussed above; and (2) continue to suspend liquidation of all unliquidated entries of wind towers from Indonesia at a cash deposit rate of 0.00 percent which are entered, or withdrawn from warehouse, for consumption on or after January 7, 2022, which is ten days after the court's decision, in accordance with section 516A of the Act.⁹ In the event that the CIT's judgment affirming the *Final Redetermination* is not appealed, or is appealed and upheld by the U.S. Court of Appeals for the Federal Circuit, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate those entries of subject merchandise without regard to countervailing duties. Notwithstanding the continued suspension pursuant to *Timken* described above, the CVD order on wind towers from Indonesia is hereby revoked.

At this time, Commerce remains enjoined by CIT order during the pendency of litigation, including any appeals, from liquidating entries of wind towers from Indonesia that were produced and/or exported by Kenertec and that were entered, or withdrawn from warehouse, during the period December 13, 2019, through December 31, 2020, excluding entries on or after

⁹ See, e.g., *Drill Pipe from the People's Republic of China: Notice of Court Decision Not in Harmony with International Trade Commission's Injury Determination, Revocation of Antidumping and Countervailing Duty Orders Pursuant to Court Decision, and Discontinuation of Countervailing Duty Administrative Review*, 79 FR 78037, 78038 (December 29, 2014); and *High Pressure Steel Cylinders from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Determination in Less Than Fair Value Investigation, Notice of Amended Final Determination Pursuant to Court Decision, Notice of Revocation of Antidumping Duty Order in Part, and Discontinuation of Fifth Antidumping Duty Administrative Review*, 82 FR 46758, 46760 (October 6, 2017).

April 11, 2020, through August 24, 2020. Pursuant to the terms of the injunction, the enjoined entries of subject merchandise will be liquidated in accordance with the final court decision in this action, including all appeals, as provided in section 516A(e) of the Act.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: January 7, 2022.

Ryan Majerus,
Deputy Assistant Secretary
for Policy and Negotiations.

[FR Doc. 2022-00633 Filed: 1/12/2022 8:45 am; Publication Date: 1/13/2022]